

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LUIS RAMON SALAS RAMIREZ,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. 1:23-cv-00577-SAB

ORDER DENYING PLAINTIFF’S MOTION
FOR SUMMARY JUDGMENT AND
GRANTING DEFENDANT’S CROSS
MOTION FOR SUMMARY JUDGMENT;
DIRECTING THE CLERK OF THE COURT
TO ENTER JUDGMENT IN FAVOR OF
DEFENDANT COMMISSIONER OF SOCIAL
SECURITY AND AGAINST PLAINTIFF LUIS
RAMON SALAS RAMIREZ AND TO CLOSE
THIS ACTION

(ECF Nos. 15, 18, 19)

I.

INTRODUCTION

Luis Ramon Salas Ramirez (“Plaintiff”) seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner” or “Defendant”) denying his application for disability benefits pursuant to the Social Security Act. The matter is currently before the Court on the parties’ briefs, which were submitted, without oral argument, to Magistrate Judge Stanley A. Boone.¹

Plaintiff requests the decision of Commissioner be vacated and this case be remanded for

¹ The parties have consented to the jurisdiction of the United States Magistrate Judge and this action has been assigned to Magistrate Judge Stanley A. Boone for all purposes. (See ECF Nos. 6, 11, 12.)

1 further proceedings, arguing the ALJ applied the wrong analysis in determining that Plaintiff had less
2 than marked ability to care for himself; and failed to offer any reasons to reject Plaintiff's symptom
3 complaints.

4 For the reasons explained herein, Plaintiff's motion for summary judgment shall be denied
5 and Defendant's cross motion for summary judgment shall be granted.

6 II.

7 BACKGROUND

8 A. Procedural History

9 An application for supplemental security income was protectively filed for Plaintiff, an
10 individual under the age of 18, on December 4, 2017. (AR 101.) Plaintiff's application was initially
11 denied on May 14, 2018, and denied upon reconsideration on August 22, 2018. (AR 116-19, 123-
12 26.) Plaintiff requested and received a hearing before Administrative Law Judge Erin Justice ("the
13 ALJ"). Plaintiff and his mother did not appear for a telephonic hearing on March 22, 2021, however
14 the hearing proceeded with testimony from a medical expert. (AR 46-64.) Plaintiff and his mother
15 failed to appear for a supplemental hearing on July 20, 2021. (AR 65-9.) On January 31, 2022,
16 Plaintiff and his mother appeared and testified at a supplemental telephonic hearing. (AR 70-90.)
17 On February 28, 2022, the ALJ issued a decision finding that Plaintiff was not disabled. (AR 16-
18 31.) On February 14, 2023, the Appeals Council denied Plaintiff's request for review. (AR 1-3.)

19 B. The ALJ's Findings of Fact and Conclusions of Law

20 The ALJ made the following findings of fact and conclusions of law as of the date of the
21 decision, February 28, 2022:

- 22 1. Plaintiff was an adolescent on December 4, 2017, the date application was filed, and is
23 currently an adolescent.
- 24 2. Plaintiff has not engaged in substantial gainful activity since December 4, 2017, the
25 application date.
- 26 3. Plaintiff has the following severe impairments: post-traumatic stress disorder (PTSD);
27 anxiety; and major depressive disorder.
- 28 4. Plaintiff does not have an impairment or combination of impairments that meets or

1 medically equals the severity of one of the listed impairments.

2 5. Plaintiff does not have an impairment or combination of impairments that functionally
3 equals the severity of the listings.

4 6. The ALJ found that Plaintiff has not been disabled, as defined in the Social Security
5 Act, since December 4, 2017, the date the application was filed.

6 (AR 23-30.)

7 **III.**

8 **LEGAL STANDARD**

9 **A. The Disability Standard for Children's Social Security Income**

10 To be eligible for disabled child's insurance benefits, the claimant must meet the Social
11 Security Act's definition of "child," be unmarried, be below specified age limits (18 or 19) or be
12 under a disability which began prior to age 22 and was dependent on the insured at the time of the
13 insured's death. Astrue v. Capato ex rel. B.N.C., 566 U.S. 541, 547 (2012) (quoting 42 U.S.C. §
14 402(d)(1), see also Smolen v. Chater, 80 F.3d 1273, 1279–80 (9th Cir. 1996) (quoting 42 U.S.C. §
15 402(d)(1)(B)(ii)) ("To be eligible for disabled child's insurance benefits, the claimant must, 'at the
16 time his application is filed,' be 'under a disability . . . which began before he attained the age of
17 22.' "). A child is disabled for the purposes of the Social Security Act if he suffers from "a
18 medically determinable physical or mental impairment, which results in marked and severe
19 functional limitations, and which can be expected to result in death or which has lasted or can be
20 expected to last for a continuous period of not less than 12 months." Merrill ex rel. Merrill v. Apfel,
21 224 F.3d 1083, 1085 (9th Cir. 2000) (quoting 42 U.S.C. § 1382c(a)(3)(C)(i)).

22 The Social Security regulations establish a three-step sequential evaluation process to be
23 followed in a child disability case. 20 C.F.R. § 416.924. At the First Step, the Commissioner must
24 determine whether the claimant is working and whether the work is substantial gainful activity; if
25 so, a finding of nondisability is made and the claim is denied. 20 C.F.R. § 416.924(b). At the
26 Second Step, where the claimant is been found not to be engaged in substantial gainful activity, the
27 Commissioner must determine whether the claimant has a severe medically determinable
28 impairment or combination of impairments; if not, a finding of nondisability is made and the claim

1 is denied. 20 C.F.R. § 416.924(c). If a severe impairment is found, the Commissioner continues
2 to the Third Step, in which the Commissioner must determine whether the claimant's impairment
3 meets or medically or functionally equals an impairment in the Listing of Impairments ("the
4 Listing"). 20 C.F.R. § 416.924(d). If the impairment meets or equals an impairment in the Listing,
5 it is presumed to cause "marked and severe functional limitations," provided it also meets the
6 duration requirement, and benefits are awarded. 20 C.F.R. § 416.924(d).

7 "The claimant's impairment will medically equal a listed impairment 'if the medical
8 findings are at least equal in severity and duration to the listed findings.' " Howard ex rel. Wolff
9 v. Barnhart, 341 F.3d 1006, 1012 (9th Cir. 2003) (quoting Interim Final Rules, 62 Fed. Reg. at
10 6424; 20 C.F.R. § 416.926(a)(1997).) The impairment will be considered to be functionally
11 equivalent if the claimant has marked limitation in two areas or an extreme limitation in one area.
12 Howard, 341 F.3d at 1022 (quoting Interim Final Rules, 62 Fed. Reg. at 6425, 20 C.F.R. §
13 416.926a(b) (2) (1997)). Functional equivalence is considered in five areas: "(i) Acquiring and
14 using information; (ii) Attending and completing tasks; (iii) Interacting and relating with others;
15 (iv) Moving about and manipulating objects; (v) Caring for yourself; and (vi) Health and physical
16 well-being." 20 C.F.R. § 416.926a(b)(1).

17 In evaluating the claimant's ability to function in each domain, the ALJ is to consider the
18 following questions regarding whether the impairment affects the claimant's function and whether
19 the claimant's activities are typical of other children of the same age who do not have impairments:
20 (1) what activities can the claimant perform?; (2) what activities is the claimant not able to
21 perform?; (3) which of the claimant's activities are limited or restricted compared to other children
22 the claimant's age who do not have impairments?; (4) where does the claimant have difficulty with
23 his/her activities-at home, in childcare, at school, or in the community?; (5) does the claimant have
24 difficulty independently initiating, sustaining, or completing activities?; and (6) what kind of help
25 does the claimant need to do his/her activities, how much help does the claimant need, and how
26 often does the claimant need it? 20 C.F.R. § 416.926a(b)(2)(i)-(vi). When the claimant's
27 impairment does not meet or equal an impairment in the Listing, or does not meet the durational
28 requirement, the claimant is determined to be not disabled. 20 C.F.R. § 416.924(d).

B. Standard of Review

Congress has provided that an individual may obtain judicial review of any final decision of the Commissioner of Social Security regarding entitlement to benefits. 42 U.S.C. § 405(g). In determining whether to reverse an ALJ's decision, the Court reviews only those issues raised by the party challenging the decision. See Lewis v. Apfel, 236 F.3d 503, 517 n.13 (9th Cir. 2001). Further, the Court's review of the Commissioner's decision is a limited one; the Court must find the Commissioner's decision conclusive if it is supported by substantial evidence. 42 U.S.C. § 405(g); Biestek v. Berryhill, 139 S. Ct. 1148, 1153 (2019). "Substantial evidence is relevant evidence which, considering the record as a whole, a reasonable person might accept as adequate to support a conclusion." Thomas v. Barnhart (Thomas), 278 F.3d 947, 954 (9th Cir. 2002) (quoting Flaten v. Sec'y of Health & Human Servs., 44 F.3d 1453, 1457 (9th Cir. 1995)); see also Dickinson v. Zurko, 527 U.S. 150, 153 (1999) (comparing the substantial-evidence standard to the deferential clearly erroneous standard). "[T]he threshold for such evidentiary sufficiency is not high." Biestek, 139 S. Ct. at 1154. Rather, "[s]ubstantial evidence means more than a scintilla, but less than a preponderance; it is an extremely deferential standard." Thomas v. CalPortland Co. (CalPortland), 993 F.3d 1204, 1208 (9th Cir. 2021) (internal quotations and citations omitted); see also Smolen, 80 F.3d at 1279. Even if the ALJ has erred, the Court may not reverse the ALJ's decision where the error is harmless. Stout v. Comm'r, Soc. Sec. Admin., 454 F.3d 1050, 1055-56 (9th Cir. 2006). Moreover, the burden of showing that an error is not harmless "normally falls upon the party attacking the agency's determination." Shinseki v. Sanders, 556 U.S. 396, 409 (2009).

Finally, "a reviewing court must consider the entire record as a whole and may not affirm simply by isolating a specific quantum of supporting evidence." Hill v. Astrue, 698 F.3d 1153, 1159 (9th Cir. 2012) (quoting Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006)). Nor may the Court affirm the ALJ on a ground upon which he did not rely; rather, the Court may review only the reasons stated by the ALJ in his decision. Orn v. Astrue, 495 F.3d 625, 630 (9th Cir. 2007); see also Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir. 2003). Nonetheless, it is not this Court's function to second guess the ALJ's conclusions and substitute the Court's judgment for the ALJ's; rather, if the evidence "is susceptible to more than one rational interpretation, it is

the ALJ’s conclusion that must be upheld.” Ford, 950 F.3d at 1154 (quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005)).

IV.

DISCUSSION AND ANALYSIS

As stated above, Plaintiff raises two issues on appeal: (1) the ALJ’s determination that Plaintiff did not functionally equal a listed impairment is unsupported by substantial evidence as the ALJ applied an incorrect standard in determining that Plaintiff had less than a marked limitation in his ability to care for himself; and (2) that the ALJ failed to offer any reasons to reject Plaintiff’s symptom complaints and therefore the RFC does not include limitations consistent with his symptom complaints.

A. Whether the ALJ Erred in Determining Plaintiff had Less than Marked Limitations in the Area of Ability to Care for Himself

Plaintiff argues that the ALJ’s analysis shows that he failed to properly understand the nature of the areas of functioning and is therefore unsupported by substantial evidence. Plaintiff challenges the finding that Plaintiff maintained the ability to care for himself asserting the ALJ focused on Plaintiff’s ability to appear well groomed, to drive to stores, and failure to provide testimony regarding carryout his personal care. Plaintiff argues that the evidence shows that he has much more difficulty in his ability to maintain his emotional state, cope with stress, and maintain his own health and living area. Plaintiff asserts this is evidenced by his documented history of self-harm, attempted suicide, suffering angry outbursts, and needing reminders from his mother to handle his chores. (Pl.’s Motion for Summary Judgment (“MSJ” 6,² ECF No. 16.)

Plaintiff contends that the ALJ made no mention of Plaintiff’s self-harm, and this directly relates to his ability to maintain a healthy emotional state. Plaintiff argues that this lack of explanation as to why this relevant evidence was ignored is error. Further, Plaintiff argues that the explanation the ALJ did provide does not support the conclusion that Plaintiff had a less than marked limitation in this area, as the evidence does not support that Plaintiff groomed himself or

² All references to pagination of specific documents pertain to those as indicated on the upper right corners via the CM/ECF electronic court docketing system.

1 received help or reminders from his mother. Additionally, Plaintiff asserts that his ability to drive
2 to the grocery store does not support the conclusion as it is wholly unexplained how his ability to
3 drive to the grocery store on an irregular basis equates to an ability to maintain a healthy emotional
4 and physical state. (MSJ 7.)

5 Plaintiff asserts that the failure to mention his self-harm and his suicide attempt, combined
6 with the flawed explanation provided requires that the less than marked limitation be found to be
7 unsupported by substantial evidence. Further, Plaintiff states the error is harmful and remand is
8 required. (MSJ 8.)

9 Defendant counters that Plaintiff has not shown that the ALJ erred. (Def.'s Cross Motion for
10 Summary Judgment and Opposition ("Opp.") 4, ECF No. 18.) Defendant argues that the ALJ
11 reasonably concluded that Plaintiff had a less than marked limitation in the domain. Defendant
12 states, that consistent with the regulations, the ALJ considered that Plaintiff had been compliant
13 with medication for the past year and had expressed an interest in Forensics with aspirations to
14 become a crime scene investigator. Further, Defendant asserts that the ALJ considered that Plaintiff
15 appeared well groomed for appointments and did not report any struggles with his personal care.
16 Defendant also notes that Plaintiff's mother reported that Plaintiff was able to care for his personal
17 needs, such as cleaning himself, brushing his teeth and combing his hair with no reported limitations
18 in any of these abilities.

19 Additionally, Defendant contends that consistent with the regulations, the ALJ considered
20 that Plaintiff enjoyed playing soccer, playing volleyball, playing video games, and listening to
21 music, and that he sometimes drove to the grocery store. (Opp. 5.) Additionally, Defendant notes
22 that statements from Plaintiff's teachers suggest only a slight problem in this domain, the medical
23 expert testified that Plaintiff had less than a marked limitation in this domain, and there is no opinion
24 suggesting a marked limitation in this domain. Defendant argues that the ALJ reasonably found a
25 less than marked limitation and while Plaintiff disagrees with the finding, he has not shown that the
26 ALJ erred. (Opp. 6.)

27 Defendant asserts that the evidence supports symptom improvement with medication,
28 therapy, and exercise and that he appeared well groomed at appointments and did not report any

1 struggles in carrying out his personal care. (Opp. 6-7.) Defendant contends that Plaintiff is seeking
 2 to have this court reweigh the evidence and find in his favor, but that the evidence could be subject
 3 to an alternative interpretation does not demonstrate that the ALJ erred. (Opp. 7.)

4 Plaintiff replies that Defendant's post hoc rationalization provides no legal argument in
 5 opposition to his contentions. Plaintiff argues that Defendant wholly failed to address his
 6 contentions, including that the ALJ misrepresented the evidence. Plaintiff asserts that Defendant
 7 has failed to provide a legal response to Plaintiff's contentions and remand is required. (Pl.'s Reply
 8 2, ECF No. 19.)

9 1. Legal Standard

10 A child's ability under this domain is assessed based on how well he is able to maintain a
 11 healthy emotional and physical state, including meeting his physical and emotional wants and needs
 12 in appropriate ways, how he copes with stress and changes in his environment, and whether he takes
 13 care of his own health, possessions, and living area. 20 C.F.R. § 416.926a(k). Adolescents "should
 14 feel more independent from others and should be increasingly independent in all of [their] day-to-
 15 day activities." 20 C.F.R. § 416.926a(k)(v). They may "sometimes experience confusion in the
 16 way" they feel about themselves and "should begin to notice significant changes in [their bodies']
 17 development." Id. Although adolescents may have anxiety and worry about themselves or their
 18 bodies, they should "begin to discover appropriate ways to express [their] feelings, both good and
 19 bad (e.g., keeping a diary to sort out angry feelings or listening to music to calm yourself down)." Id.
 20 They "should begin to think seriously about your future plans, and what [they] will do when
 21 [they] finish school." Id. Examples of limited functioning in caring for oneself include:

- 22 (i) You continue to place non-nutritive or inedible objects in your mouth.
- 23 (ii) You often use self-soothing activities showing developmental regression (e.g.,
 24 thumbsucking, re-chewing food), or you have restrictive or stereotyped
 mannerisms (e.g., body rocking, headbanging).
- 25 (iii) You do not dress or bathe yourself appropriately for your age because you have
 an impairment(s) that affects this domain.
- 26 (iv) You engage in self-injurious behavior (e.g., suicidal thoughts or actions, self-
 inflicted injury, or refusal to take your medication), or you ignore safety rules.
- 27 (v) You do not spontaneously pursue enjoyable activities or interests.
- (vi) You have disturbance in eating or sleeping patterns.

28 20 C.F.R. § 416.926a(k)(3).

2. Analysis

In addressing why Plaintiff did not meet or equal the severity of a listed impairment, the ALJ considered that Plaintiff did not demonstrate a minimal capacity to adapt to changes in the environment. (AR 24.) The ALJ found that Plaintiff demonstrated intact judgment and insight and had only one, short inpatient stay in the record. (AR 24.) The ALJ considered Plaintiff's continued mental health treatment and found that Plaintiff did not meet the criteria of a listed impairment. (AR 24.)

In determining that Plaintiff does not have an impairment that functionally equals the severity of the listings, the ALJ considered how Plaintiff functioned in the six domains and found that Plaintiff had no limitations or less than a marked limitation in all domains. (AR 25.)

a. Whether the ALJ erred in finding Plaintiff was able to perform personal care

Plaintiff only challenges the finding in the domain of ability to care for himself. In making this finding the ALJ stated,

The claimant's mother stated the claimant struggled against completing schoolwork and he needs to be reminded to do chores (7E; 3F/7). However, the claimant appeared well groomed at appointments (3F/13, 16). He also testified that he will drive to the grocery store sometimes. Lastly, the claimant did not report any struggles with carrying out his personal care in his testimony. Therefore, he has a less than marked limitation in this domain.

(AR 26.)

In making these findings, the ALJ noted the following records. On June 22, 2018, Plaintiff's mother completed an adult function report for Plaintiff. (AR 490-97, 505-12.) She stated that from the time he wakes up until he goes to bed, he eats, asks for things, gets upset, goes back to sleep, and does not eat. He has been the same since he was three years old. Sometimes he does not sleep and is scared. He has no problem with his personal care. (AR 506.) She reminds him to take care of his personal needs and grooming and to take his medication. He is a minor and does not cook. (AR 507.) He does not do household chores because he is a minor. (AR 507-08.) The second record cited by the ALJ is a treatment plan that does not address Plaintiff doing chores. (AR 762.)

Plaintiff goes outside once or twice a day to play, but sometimes just sits. He is able to go out alone. He does not drive because he is a minor. He shops for food with his mother. He does

1 not handle money because his mother is his payee. (AR 508.) His hobby is football, and he plays
2 once a week on Wednesday or Thursday. He spends time playing with his brother once a week.
3 He does not need to be reminded to go places nor does he need someone to accompany him. (AR
4 509.) He hardly has any friends and does not like to socialize with anyone. His condition affects
5 his memory, ability to complete tasks, concentrate, understand, follow instructions and getting
6 along with others. He is able to pay attention for about five minutes. He does not follow written
7 or spoken instructions well. (AR 510.) He does not get along well with authority figures. He does
8 not handle stress or changes in routine well. He feels stress because he feels threatened. (AR 511.)
9 He takes medication and has no side effects. (AR 512.)

10 The ALJ noted that Plaintiff appeared well groomed at his appointments. (AR 768, 771.)
11 Plaintiff argues that there is no indication in any of the treatment notes whether Plaintiff was
12 grooming himself or if he received help or reminders from his mother. (Mot. 7.) Although the ALJ
13 stated that Plaintiff needed to be reminded to do chores, the record itself states he does not do any
14 chores because he is a minor, rather he requires reminders to take care of his personal needs and
15 grooming and to take his medication. (AR 507.) Although the ALJ found, and the parties argue,
16 that Plaintiff needs reminders to do chores, his mother specifically stated Plaintiff did not need
17 reminders to take care of chores. (AR 507.)

18 On January 5, 2018, Plaintiff's mother completed a function report for Plaintiff. (AR 457-
19 63.) She reported that Plaintiff has no impairments in speech, hearing, communication, ability to
20 understand and use what he has learned, physical ability, or ability to care for his personal needs.
21 (AR 458-63.)

22 The ALJ also noted that Plaintiff did not report any difficulties in carrying out his personal
23 care during the hearing. The ALJ could reasonably find that the evidence supported a finding that
24 Plaintiff maintained the functioning to care for his personal needs.

25 **b. Whether the ALJ erred by failing to consider that Plaintiff's ability to maintain a**
26 **health emotional state and deal with stress**

27 Plaintiff also argues that the evidence demonstrates that he has much more difficulty in his
28 ability to maintain a healthy emotional state and cope with stress. Plaintiff contends that this is

1 demonstrated by his history of self-harm, attempting suicide, angry outbursts, and the ALJ did not
2 mention Plaintiff's history of self-harm. (MSJ 6-7.) Plaintiff also argues his need for reminders
3 from his mother to handle chores is also significant. However, as discussed above, this is a
4 misrepresentation of the record.

5 The ALJ did consider that Plaintiff reported that his siblings will cause him anxiety and that
6 he will yell at them. (AR 27, 80, 81.) The ALJ noted that Plaintiff stated his depression is improved
7 with medication, but that he sometimes will still self-harm, such as punching and scratching himself
8 two weeks prior to the hearing. (AR 27, 82, 84.) The ALJ considered that Plaintiff's mother and
9 sister-in-law alleged that he has difficulty getting along with others and his mother alleged that he
10 gets aggressive with others at times. (AR 27, 79, 510, 523.)

11 While Plaintiff contends that the ALJ did not mention Plaintiff's history of self-harm, the
12 ALJ did specifically address Plaintiff's inpatient psychiatric care in July 2017 for suicidal ideation
13 and a self-strangulation attempt when he was 12 years old. The ALJ noted that Plaintiff was
14 discharged five days later, his insight and affect improved, and he denied suicidal ideation. (AR
15 27, 729-48, 798.) The ALJ then went on to discuss Plaintiff's subsequent treatment.

16 On July 26, 2017, Plaintiff was brought by his mother for a hospital discharge follow-up
17 and mental health assessment. (AR 27, 756.) Plaintiff had been admitted to Exodus Youth Crisis
18 Stabilization Center on July 18, 2017, and was discharged on July 22, 2017. He reported that he
19 was hospitalized for depression and suicidal thoughts. He reported feeling depressed once a week,
20 is easily distracted twice a week, argues with his mother, talks back to her, is irritable once a week,
21 has been bullied in school, lies sometimes, has a history of physical abuse by his father, has been
22 suspended from school three times for fighting, has difficulty with math, low self-esteem
23 sometimes, keeps everything to himself, feels hopeless sometimes, has reduced interest in activities,
24 is worried about losing his mom because she has diabetes, is shy, and experiences headaches and
25 stomach aches when he feels stressed out. He also reported that he stays to himself. Plaintiff
26 reported that his depression started in March when he was exposed to bullying, but his mother said
27 his problems started when he was little. (AR 756.) Plaintiff reported that he wanted to be a
28 musician when he grew up and he used music to get him away from his anger and depression.

1 Plaintiff reported that he had made three attempts to hang himself. The first occurred in March and
2 the last attempt was on July 17, 2017. He first cut himself in March, he had cut himself on three
3 occasions, but had stopped cutting two months prior. (AR 758.) Mental examination noted that
4 Plaintiff wore casual attire appropriate for the weather. Behavior was cooperative and within
5 cultural norms. Plaintiff shook his leg at times stating he was a bit nervous, and he was noted to be
6 playful with his mother. He was cooperative, guarded, reserved, and evasive toward the examiner.
7 He was noted to be overly shy. He reported having 4 or 5 friends, but stated he does not really like
8 friends because they start drama, and he tries to stay away from drama. Speech was noted to be
9 soft. Mood was irritable, sad, dysphoric, depressed, and worried. When asked how he felt at the
10 moment, he stated, "I feel great." (AR 758.) Affect was restricted, limited, constricted, inhibited.
11 He was oriented to person, place, time and situation. He denied delusions, hallucinations,
12 distortions and there were no overt signs of psychosis. Intelligence appeared to be average based
13 on his responses throughout the interview. Thought flow was linear, logical, coherent, and rational.
14 He endorsed low self-esteem. Immediate, short term, and recent memory were intact. Abstraction
15 and interpretation were intact. Judgment and insight were impaired. The record notes Plaintiff
16 "currently experiences distress or impairments in the areas of social relationships, daily activities,
17 health, and academic performance as a result of his depressive symptoms and angry outbursts. [He]
18 minimizes his presenting problems and is reserved with this clinician." (AR 27, 759.)

19 The ALJ further considered Plaintiff's mental health records from his continued mental
20 health treatment. On October 4, 2017, Plaintiff denied suicidal ideation and it is noted that he had
21 previously refused medication, but he stated that therapy had been helpful. He was well groomed,
22 alert, and cooperative. Examination notes his motor activity, cognition, speech, orientation, thought
23 content, mood, and affect were normal. His intelligence was average, and his insight and judgment
24 were normal. (AR 28, 782.) Plaintiff was diagnosed with major depressive disorder, PTSD, and
25 generalized anxiety disorder. It was recommended he take Prozac to help his symptoms. (AR 28,
26 783.)

27 On February 22, 2018, Plaintiff's mother called the school and reported that after she made
28 him go to school, he said he would do something because he did not want to be at school which

1 was not typical of him. He told the examiner that he was worried about his brother who was going
2 to court on a domestic violence charge that day and was at risk of being deported because his brother
3 was “not from here.” He stated he told his mother he would “do something” out of frustration and
4 anger. It was hard for him to be at school due to worry. He reported he had not taken his medication
5 for the past five days. (AR 793.) Plaintiff stated he had career goals, was a role model for his
6 younger siblings and cared about them. He also stated he has a good relationship with his mother,
7 but when coping with stress his family does not talk but sends the message to “just move on, not to
8 talk about it.” (AR 704.) Plaintiff was noted to be calm and cooperative, at times smiling and
9 interactive. (AR 28, 704.)

10 On April 11, 2018, Plaintiff was 13 years old and taking Wellbutrin for his mental health
11 symptoms and reported feeling better on his medication. Examination notes he appeared well
12 groomed and was alert and cooperative. His motor activity, cognition, speech, orientation, thought
13 content, mood, and affect were normal. His intelligence was average, and his insight and judgment
14 were normal. (AR 28, 771.)

15 On May 29, 2018, Plaintiff was seen reporting that he had not been feeling sad and was
16 doing good at school. He had new people in school. His mom reported that he has shown attitude
17 by his siblings, and she still sees him very angry and frustrated. Mental examination noted that he
18 is well groomed, and cooperative. Plaintiff was alert. Motor activity, cognition, speech, orientation,
19 thought content, mood, affective range, and insight and judgment were normal. Intelligence was
20 average. Plaintiff was noted to be stable on his medication. It was noted that Plaintiff reported on
21 March 18, 2018, that he was aggressive because he saw his father twice in the grocery store and it
22 brings back memories of abuse. (AR 28, 768.)

23 On May 3, 2018, Plaintiff underwent a psychological examination with Dr. Swanson. (AR
24 28, 751-55.) Plaintiff reported recently spending time in a psychiatric facility in 2017 due to
25 suicidal ideation and that he took anti-depressant medication for a short time afterwards but ceased
26 taking the medication. (AR 28, 752.) He reported that he had felt suicidal due to bullying at school
27 but had not felt any suicidal ideation since because he was not feeling bullied. Plaintiff stated he
28 had a steady girlfriend, enjoys listening to music, plays soccer, plays volleyball, and enjoys video

1 games. His mother alleged sometimes Plaintiff “stresses” and slams the door at home. (AR 28,
2 752.) Plaintiff reported wanting to become a musician, singer, or coroner. (AR 752.) It was noted
3 Plaintiff had been suspended a few times from school for fighting but reported no criminal activity
4 or substance abuse. Furthermore, he reported having seven or eight friends at school. (AR 28,
5 752.)

6 His appearance exhibited satisfactory concern for personal hygiene and grooming. He was
7 oriented to person, time, place, and situation. His attitude was cooperative and friendly. Eye
8 contact was within normal limits. Plaintiff exhibited an average amount of motor movement with
9 no marked idiosyncrasies. He exhibited a full range of affect. (AR 753.) His mood was euthymic,
10 and he reported feeling “normal...okay” and his speech was unremarkable. He indicated he feels
11 happy most days. Plaintiff denied suicidal ideation and stated he has never been seriously suicidal.
12 (AR 28, 753.) Short term, recent, and remote memory were within normal limits. He maintained
13 satisfactory attention and concentration. (AR 753.) Plaintiff’s IQ score of 81 was obtained through
14 testing, placing him in the 10th percentile. (AR 28, 753.) Dr. Swanson opined,

15 Luis denied any psychotic symptoms and there is no strong indication of serious
16 psychopathological disturbance. He enjoys hanging out with friends, playing sports,
17 spending time with his girlfriend, and listening to music.

18 Luis has the ability to understand and respond to increasingly complex requests,
19 instructions, or questions in an age-appropriate manner. He appears to have the
20 ability to communicate by understanding, initiating, and using language in an age-
21 appropriate manner. There is no evidence of any deficit in ability to engage in age-
22 appropriate physical activities. He appears to have the ability to socially integrate
23 with peers and adults in a mostly age-appropriate fashion. He appears to have the
24 ability to respond to stimuli in a mostly age-appropriate manner. He seems to have
25 the ability to engage in and sustain an activity at a pace that is mostly appropriate for
26 his age.

27 (AR 754.)

28 Plaintiff was seen on August 13, 2018, reporting a depressed mood daily for the past three
years. (AR 28.) He reported poor appetite five to seven times per week, poor concentration daily,
low energy or fatigue daily, and feelings of hopelessness daily. There were no thoughts of suicide
or self-harm. Plaintiff reported that due to the small class sizes and classroom time being only four
hours per day, he was able to control his anger and raise his grades. (AR 28, 829.) He reported
being able to make and maintain peer relationships, however, he spends the majority of time in his

1 room. He reported difficulty functioning in mainstream academic settings due to frequent conflict
2 with peers. It is noted that medication compliance is poor as he often misses doses. (AR 830.)
3 Examination notes that Plaintiff was well groomed, cooperative, and behavior was within cultural
4 norms. He had adequate social skills and reported being able to make and maintain peer
5 relationships. Speech was normal for the culture. His general mood was depressed and anxious.
6 Affect was restricted/limited. He was oriented to person, place, time, and situation. He denied
7 delusions, hallucinations, distortions. Intelligence was noted to be average, thought flow was
8 logical and thought content was helpless/hopeless. (AR 28, 831.) Memory, abstraction,
9 interpretation, judgment, and insight were intact. (AR 832.)

10 The ALJ also considered Plaintiff's Individualized Educational Program (IEP) from
11 September 7, 2018, which noted Plaintiff would be given specialized instruction in order to
12 accommodate his emotional and behavior difficulties. (AR 28, 1273.)

13 The ALJ considered a June 25, 2019, treatment plan in which his mother reported he was
14 walking for exercise and was more relaxed. Plaintiff reported that his medication helped to some
15 extent and his depression had decreased from 7-8 to 2-3/10 with therapy at school starting weekly
16 and helping. (AR 28, 839.)

17 On November 15, 2019, Plaintiff stated his medication was helping, and he was doing well
18 with less anger, and he was playing soccer. (AR 29, 866.) Examination was unremarkable, other
19 than insight and judgment are impaired. (AR 866.)

20 On January 6, 2020, Plaintiff reported sleeping well other than getting readjusted to return
21 from school break. He reported he was doing well with a more peaceful and happy mood on
22 medication and his grades were passing. His mother reported that Plaintiff was doing okay for the
23 most part, but still had episodes where he gets overly angry and depressed over the abuse by his
24 father. Plaintiff played soccer for exercise. (AR 29, 860.) He was eating and usually slept well.
25 He was doing well with the elimination of anger since Abilify had been discontinued. Plaintiff
26 continued to refuse therapy stating he did not want it. He was sleeping well ten hours per night in
27 recent months. On examination, Plaintiff was noted to be well groomed, alert, and cooperative.
28 Motor activity, cognition, speech, orientation, thought content, mood, and affective range were

1 normal. Intelligence was average. Insight and judgment were impaired. (AR 860.) He was noted
2 to be compliant on medication and was guarded and did not want to discuss issues. (AR 29, 860.)

3 On March 23, 2020, Plaintiff reported doing well and sleeping well when not in school.
4 Plaintiff's mother requested medication to help control his anger. She was reminded that exercise
5 and therapy would be helpful. Plaintiff was averse to the exercise and therapy. (AR 29, 1155.)
6 Sleep and appetite are noted to be normal, and Plaintiff was compliant with medication with no side
7 effects. Plaintiff was well groomed, cooperative, and alert. (AR 1155.) Motor activity, cognition,
8 speech, orientation, thought content, mood, and affect are noted to be normal. (AR 1155-56.)
9 Intelligence was average and insight and judgment were impaired. Plaintiff was noted to be stable
10 on medication, but still had anger and sad feelings due to his history of abuse by father that need to
11 be addressed. It is noted that although he is compliant with medication, Plaintiff refuses to attend
12 therapy. (AR 1156.)

13 In the opinion the ALJ states,

14 On June 2020, Plaintiff's mother alleged he still struggled with depression and
15 aggression. He had since stopped taking his past medications and was recently
16 placed on Bupropion. She reported he gets along well with family for the most part,
17 but stated he would get in arguments with her when in an angry mood. The claimant
18 was diagnosed again with depression and post-traumatic stress disorder (PTSD)
19 (14F/18).

20 (AR 29.) It is unclear which visit this notation refers to as the page cited does not contain the
21 information referenced.

22 A review of Exhibit 14F, shows that it contains notes from Uplift Family Services. Plaintiff
23 was seen on June 1, 2020. He and his mother reported that he had been struggling with depression
24 for at least six years. Plaintiff complained of irritability most days and becoming easily
25 angered/irritated with others. His mother reported he was always in his room sleeping, complaints
26 of fatigue, and not wanting to do things with the family. Plaintiff complained of feeling sad and
27 hopeless about his relationship with his father, his future, and things ever being good for him.
28 Plaintiff denied suicidal ideation for at least three months, but his mother stated he had suicidal
ideation two months prior and said the only reason he did not kill himself was to protect his younger
siblings. Plaintiff had been placed on Bupropion by an unknown physician on May 29, 2020. (AR

1 1093.) He was diagnosed with dysthymic disorder and PTSD. (AR 1102.)

2 Plaintiff had appointments for May 4, 2020, and it is noted that Plaintiff did not show for his
3 appointment because he refused to get out of bed. (AR 1152.) On June 1, 2020, Plaintiff had an
4 appointment, and they were unable to reach him or his mother. (AR 1149.)

5 On June 15, 2020, Plaintiff was seen and reported he was doing well with no current
6 depression or anxiety and was sleeping well. He denied any suicidal ideation. There were no anger
7 outbursts, and he was calmer on his medication. (AR 1146.) Examination is unremarkable other
8 than impaired judgment and insight. (AR 1146-47.) He is noted to be stable on his medication.
9 (AR 1147.)

10 Plaintiff was seen again on July 24, 2020, reporting continuing to do well with no anger
11 outbursts or suicidal ideation. However, it is noted that he is still adamantly refusing to attend
12 therapy. (AR 1142.) Examination notes remain the same. (AR 1142-43.)

13 In Plaintiff's October 6, 2020 IEP paperwork, his teachers' comments state he is a largely
14 respectful, intelligent student who can become distracted. Furthermore, one teacher noted he
15 appeared to be very social and seems to get along well with his peers. Attendance and assignment
16 completion appeared to affect his grades, but he had expressed interest in Forensics with aspirations
17 to become a Crime Scene Investigator. (AR 28, 1114.)

18 At a telehealth appointment on March 3, 2021, Plaintiff stated he was sad, but not depressed,
19 meaning he still speaks with other people. Plaintiff's mother alleged he continued to get angry
20 when he has to do schoolwork. (AR 29, 1107.) However, it was noted he has a good group of
21 friends and was in the 10th grade. He denied suicidal ideation. (AR 29, 1108.)

22 On December 22, 2021, Plaintiff's mother informed the provider that Plaintiff had been
23 avoiding treatment, because he felt it unnecessary. (AR 29, 1337.)

24 Contrary to Plaintiff's allegations, the Court finds that the ALJ did consider Plaintiff's
25 history of self-harm, attempting suicide, and angry outbursts in finding that Plaintiff had a less than
26 marked limitation in his ability to care for himself. Additionally, the ALJ considered the medical
27 opinions and prior administrative findings in the record. (AR 29-30.) No physician has found that
28 Plaintiff has marked limitations in any domain.

1 Ultimately, Plaintiff is seeking to have this Court reweigh the evidence and substitute the
2 Court's opinion for that of the ALJ. Here, the evidence is susceptible to more than one rational
3 conclusion and the ALJ's decision must be upheld. Ford v. Saul, 950 F.3d 1141, 1154 (9th Cir.
4 2020). The Court finds that substantial evidence supports the ALJ's finding that Plaintiff has a less
5 than marked limitation in his ability to care for himself. Plaintiff's motion for summary judgment
6 is denied; and Defendant's cross motion for summary judgment is granted on this ground.

7 **B. Plaintiff's Symptom Complaints**

8 Plaintiff also contends that the ALJ only vaguely asserted that Plaintiff's statements are not
9 entirely consistent with the medical evidence and other evidence in the record and then simply
10 proceeded to summarize the treatment record. (MSJ 9.) Plaintiff argues that the ALJ did not
11 properly evaluate his symptom complaints in compliance with the regulations and the failure to
12 offer clear and convincing reasons to discount his testimony warrants remand. (MSJ 10.)

13 Defendant counters that the ALJ properly discounted Plaintiff's symptom testimony finding
14 that it was inconsistent with other evidence in the record. (Opp. 8.) Defendant seeks to have the
15 decision affirmed. (Opp. 9.)

16 Plaintiff replies that Defendant is offering analysis that directly contradicts the prevailing
17 legal standard because the ALJ cannot reject his symptom testimony solely because it is inconsistent
18 with the objective evidence. Further, Plaintiff argues that Defendant has done nothing more than
19 list Plaintiff's daily activities without providing more insight than the ALJ did in the decision itself.
20 (Reply 3.)

21 **1. Plaintiff's Hearing Testimony**

22 Plaintiff testified at the January 31, 2022 hearing. (AR 76-84.) Plaintiff was sixteen almost
23 seventeen and was a junior in high school. (AR 76.) He sometimes would drive but did not have
24 a driver's license or permit. (AR 76-7.) He would just drive when his mother sent him on an errand,
25 like to the grocery store. His mother takes him to school. (AR 77.)

26 Plaintiff has three siblings, ages 6, 8, and 13. Their relationship is complicated, but he gets
27 along pretty well with his siblings. (AR 77.) His siblings stress him out a lot and he will get
28 aggressive with them and start yelling at them. That is pretty normal behavior for him, and he will

1 yell at them three times a week. (AR 80.)

2 His favorite subject in school is history. He does not participate in afterschool activities.
3 (AR 77.) On nights and the weekend, he just stays home after school and stays in his room listening
4 to music. He does not play video games, watch movies or hang out with friends. Plaintiff is on
5 social media for an hour every two days or so. On the weekends, he spends ten to twelve hours
6 listening to music. (AR 78.) He sleeps a lot because he does not want to be awake. (AR 80-1.)
7 He has four or five friends at school but does not hang out with them outside of school. (AR 78.)

8 Plaintiff is taking his medications regularly and still has symptoms. He still has anger issues
9 with his mom and siblings and things are not so great at school. His grades are not good. They are
10 really bad, F's, because he cannot concentrate well. (AR 81.) He has trouble concentrating because
11 of stress and his anger. There are times when he just cannot concentrate. His attendance is a little
12 better. Plaintiff receives specialized instruction up to 538 minutes per week. He is not sure why,
13 but it has not helped him to do better in school. (AR 82.)

14 His depression is not so great, but it is "somewhat good." It is a little better. Sometimes he
15 still wants to harm himself when he is stressed. (AR 82.) To cope he lays down. When he was
16 harming himself, he was cutting himself and punching himself. He has points where he cries a lot
17 and will scratch his face. He only does that at home. He lasted punched or scratched himself two
18 weeks ago. He no longer cuts himself, but he still wants to. (AR 83.) He harms himself about
19 once a month. (AR 84.)

20 Some of his teachers are working with him one-on-one. It has helped a little bit. He
21 understands things much better. (AR 84.)

22 2. Legal Standard

23 A claimant's statements of pain or other symptoms are not conclusive evidence of a
24 physical or mental impairment or disability. 42 U.S.C. § 423(d)(5)(A); SSR 16-3p; see also Orn,
25 495 F.3d at 635 ("An ALJ is not required to believe every allegation of disabling pain or other
26 non-exertional impairment."). Rather, an ALJ performs a two-step analysis to determine whether
27 a claimant's testimony regarding subjective pain or symptoms is credible. See Garrison v. Colvin,
28 759 F.3d 995, 1014 (9th Cir. 2014); Smolen, 80 F.3d at 1281; SSR 16-3p, at *3. First, the claimant

1 must produce objective medical evidence of an impairment that could reasonably be expected to
2 produce some degree of the symptom or pain alleged. Garrison, 759 F.3d at 1014; Smolen, 80
3 F.3d at 1281–82. If the claimant satisfies the first step and there is no evidence of malingering,
4 “the ALJ may reject the claimant’s testimony about the severity of those symptoms only by
5 providing specific, clear, and convincing reasons for doing so.” Lambert v. Saul, 980 F.3d 1266,
6 1277 (9th Cir. 2020) (citations omitted).

7 If an ALJ finds that a claimant’s testimony relating to the intensity of his pain and other
8 limitations is unreliable, the ALJ must make a credibility determination citing the reasons why
9 the testimony is unpersuasive. The ALJ must specifically identify what testimony is credible and
10 what testimony undermines the claimant’s complaints. In this regard, questions of credibility and
11 resolutions of conflicts in the testimony are functions solely of the Secretary. Valentine v. Astrue,
12 574 F.3d 685, 693 (9th Cir. 2009) (quotation omitted); see also Lambert, 980 F.3d at 1277.

13 In addition to the medical evidence, factors an ALJ may consider include the location,
14 duration, and frequency of the pain or symptoms; factors that cause or aggravate the symptoms;
15 the type, dosage, effectiveness or side effects of any medication; other measures or treatment used
16 for relief; conflicts between the claimant’s testimony and the claimant’s conduct—such as daily
17 activities, work record, or an unexplained failure to pursue or follow treatment—as well as
18 ordinary techniques of credibility evaluation, such as the claimant’s reputation for lying, internal
19 contradictions in the claimant’s statements and testimony, and other testimony by the claimant
20 that appears less than candid. See Ghanim v. Colvin, 763 F.3d 1154, 1163 (9th Cir. 2014);
21 Tommasetti v. Astrue, 533 F.3d 1035, 1039 (9th Cir. 2008); Lingenfelter v. Astrue, 504 F.3d
22 1028, 1040 (9th Cir. 2007); Smolen, 80 F.3d at 1284. Thus, the ALJ must examine the record as
23 a whole, including objective medical evidence; the claimant’s representations of the intensity,
24 persistence and limiting effects of his symptoms; statements and other information from medical
25 providers and other third parties; and any other relevant evidence included in the individual’s
26 administrative record. SSR 16-3p, at *5.

27 ///

28 ///

1 3. Analysis

2 Here, the ALJ considered Plaintiff and his mother's statements during the hearing.

3 The claimant and his mother allege the claimant is limited in his functioning due to
4 a combination of mental health impairments. The claimant stated he is a junior in
5 high school and sometimes drives to the grocery store, but stated he has no license
6 and his mother often takes him to the store. He reported getting along "pretty good"
7 with his siblings and that he spends much of his time at home listening to music.
8 He stated he has four to five friends he will hang out with at school. The claimant
9 alleged his siblings will sometimes cause him anxiety and he will yell at them. He
10 stated he has been compliant with his medications for the past year, but stated he
11 still suffers mental health symptoms, like anger and difficulty concentrating at
12 school. The claimant stated his depression is somewhat improved with medication
13 but alleged he will still harm himself sometimes, like punching and scratching
14 himself two weeks prior to the hearing. The claimant alleged getting angry and
15 yelling at his siblings a few times per week.

16 ...
17 After careful consideration of the evidence, the undersigned finds that the
18 claimant's medically determinable impairments could reasonably be expected to
19 cause the alleged symptoms; however, the allegations concerning the intensity,
20 persistence and limiting effects of these symptoms are not entirely consistent with
21 the medical evidence and other evidence in the record.

22 (AR 27.)

23 **a. Allegations Unsupported/Contradicted by the Objective Medical Evidence**

24 Subjective pain testimony "cannot be rejected on the sole ground that it is not fully
25 corroborated by objective medical evidence." See Vertigan v. Halter, 260 F.3d 1044, 1049 (9th
26 Cir. 2001) ("The fact that a claimant's testimony is not fully corroborated by the objective medical
27 findings, in and of itself, is not a clear and convincing reason for rejecting it."); see also 20 C.F.R.
28 § 404.1529(c)(2) ("[W]e will not reject your statements about the intensity and persistence of your
29 pain or other symptoms or about the effect your symptoms have on your ability to work solely
30 because the available objective medical evidence does not substantiate your statements."). Rather,
31 where a claimant's symptom testimony is not fully substantiated by the objective medical record,
32 the ALJ must provide an additional reason for discounting the testimony. See Burch, 400 F.3d at
33 680–81. Nevertheless, the medical evidence "is still a relevant factor in determining the severity
34 of [the] claimant's pain and its disabling effects." Burch, 400 F.3d at 680–81; Rollins v. Massanari,
35 261 F.3d 853, 857 (9th Cir. 2001); SSR 16-3p (citing 20 C.F.R. § 404.1529(c)(2)).

36 The ALJ considered that Plaintiff alleged that he had difficulty concentrating (AR 81, 82),
37 but that he was able to persist throughout the psychological examination (AR 25, 753). The ALJ

1 also considered that Plaintiff alleged that he was compliant with medication for the last year, but
2 still had mental health issues, such as difficulty concentrating at school. (AR 27.) However, as the
3 ALJ noted, Dr. Swanson found on examination that Plaintiff maintained adequate attention and
4 concentration at the May 3, 2018 psychological examination. (AR 753.)

5 The ALJ also considered that Plaintiff's mother stated that he had anger issues at home and
6 that he had been suspended for fighting, but the ALJ noted that his teachers remarked that he was
7 respectfully and appeared very social. (AR 26.) Specifically, the ALJ noted Plaintiff's October 6,
8 2020 IEP. Plaintiff's algebra teacher stated, "Luis is very social and seems to get along well with
9 his peers." Another teacher stated, "Luis is an intelligent young man that is a great addition to my
10 class. He can be distracted at times but is respectful and obedient when asked to re-engage with
11 class work." A math teacher who had previously had Plaintiff as a student stated, "His behavior
12 was never an issue, and he was always very respectful." (AR 1114.)

13 Ninth Circuit caselaw has also distinguished testimony that is "uncorroborated" by the
14 medical evidence from testimony that is "contradicted" by the medical records, deeming the latter
15 sufficient on its own to meet the clear and convincing standard. See Johnson v. Shalala, 60 F.3d
16 1428, 1434 (9th Cir. 1995) ("The ALJ ... identified several contradictions between claimant's
17 testimony and the relevant medical evidence and cited several instances of contradictions within
18 the claimant's own testimony. We will not reverse credibility determinations of an ALJ based on
19 contradictory or ambiguous evidence."); Hairston v. Saul, 827 Fed. App'x 772, 773 (9th Cir. 2020)
20 (quoting Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1160 (9th Cir. 2008) (affirming
21 ALJ's determination claimant's testimony was "not entirely credible" based on contradictions with
22 medical opinion)) ("[c]ontradiction with the medical record is a sufficient basis for rejecting the
23 claimant's subjective testimony."); see also Stobie v. Berryhill, 690 Fed. App'x 910, 911 (9th Cir.
24 2017) (finding ALJ gave two specific and legitimate clear and convincing reasons for rejecting
25 symptom testimony: (1) insufficient objective medical evidence to establish disability during the
26 insured period and (2) symptom testimony conflicted with the objective medical evidence); Woods
27 v. Comm'r of Soc. Sec., No. 1:20-cv-01110-SAB, 2022 WL 1524772, at *10 n.4 (E.D. Cal. May
28 13, 2022) ("While a lack of objective medical evidence may not be the sole basis for rejection of

1 symptom testimony, inconsistency with the medical evidence or medical opinions can be
2 sufficient.” (emphasis in original)).

3 The ALJ further noted that Plaintiff was cooperative and pleasant at many of his
4 appointments. (AR 26.) The ALJ cited the psychological examination by Dr. Swanson who noted
5 that Plaintiff was friendly and cooperative. (AR 753.) She also noted an August 13, 2018 visit
6 which states that Plaintiff was cooperative throughout the visit. (AR 831.) Further, review of the
7 medical record which the ALJ noted in her decision provide additional support for the ALJ’s finding
8 that Plaintiff was noted to be cooperative at his medical appointments. (AR 758, 768, 771, 782,
9 831, 860, 866, 1155.) In applying the clear and convincing standard, the Ninth Circuit affirmed
10 “[c]ontradiction with the medical record is a sufficient basis for rejecting the claimant’s subjective
11 testimony.” Carmickle, at 533 F.3d at 1161. The ALJ identified specific contradictions with the
12 record which is a clear and convincing reason to reject Plaintiff’s symptom testimony. Johnson, 60
13 F.3d at 1434.

14 **b. Improvement with treatment**

15 The ALJ also noted that Plaintiff and his mother reported that his symptoms improved when
16 he was compliant with medication and participated in therapy, noting generally normal examination
17 findings. (AR 28, 82, 768, 771, 782, 839, 860, 866, 1142, 1146-47, 1146, 1155-56.) “Impairments
18 that can be controlled effectively with medication are not disabling for the purpose of determining
19 eligibility for SSI benefits.” Warre v. Comm’r of Soc. Sec. Admin., 439 F.3d 1001, 1006 (9th Cir.
20 2006). Specifically, Plaintiff reported that his depression decreased from 7-8 to 2-3 out of 10 with
21 therapy and medication. (AR 839.) Substantial evidence supports the ALJ’s finding the Plaintiff’s
22 symptoms are improved when he is compliant with treatment. This is a clear and convincing reason
23 to reject Plaintiff’s symptom testimony regarding the severity of his mental impairment.

24 **c. Failure to comply with treatment**

25 Further, the ALJ noted that Plaintiff on occasion refused medication and refused to
26 participate in recommended therapy. (AR 28, 29, 752 (ceased taking medication), 782 (refused
27 medication), 793 (had not taken medication in five days), 830 (poor medication compliance as he
28 often misses dose), 860 (refuses to attend therapy because does not want it), 1155 (adverse to

exercise and therapy).) Finally, the ALJ considered that Plaintiff's mother reported that he had been avoiding treatment because he felt it was unnecessary. (AR 29, 1337.) The ALJ may properly rely on "unexplained or inadequately explained failure to seek treatment or to follow a prescribed course of treatment. Molina v. Astrue, 674 F.3d 1104, 1113 (9th Cir. 2012); Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989). Here, there is substantial evidence in the record that the reason Plaintiff refuses to comply with medication and therapy is because he does not believe that he needs it. The ALJ can reasonably find that Plaintiff's belief that he does not need medication or therapy and fails to comply with his providers recommendations for treatment contradicts his statements regarding the severity of his symptoms. The ALJ's finding that Plaintiff failed to comply with treatment is supported by substantial evidence and is a clear and convincing reason to reject Plaintiff's testimony as to the severity of his symptoms.

The Court finds that the ALJ provided clear and convincing reasons, that are supported by substantial evidence in the record, to reject Plaintiff's complaints regarding the severity of his symptoms. Accordingly, Plaintiff's motion for summary judgment shall be denied and Defendant's cross motion for summary judgment shall be granted on this ground.

V.

CONCLUSION AND ORDER

In conclusion, the Court denies Plaintiff's motion for summary judgment and grants Defendant's cross motion for summary judgment and finds no harmful error warranting remand of this action.

Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion for summary judgment is DENIED and Defendant's cross motion for summary judgment is GRANTED. It is FURTHER ORDERED that judgment be entered in favor of Defendant Commissioner of Social Security and against Plaintiff Luis Ramon Salas Ramirez. The Clerk of the Court is directed to CLOSE this action.

IT IS SO ORDERED.

Dated: April 11, 2024



UNITED STATES MAGISTRATE JUDGE

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